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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE 528-52

In re Reissue Application of:

SPRAGUE et al.

Art Unit: 3728

Application No. 09/458,132

Primary Examiner: Bryan P. Gehman

Filed: February 16, 2000

Re: VERI MAG PACK

* * *

PETITION TO COMMISSIONER UNDER RULE 181

Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

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Dear Sir:

The applicant hereby petitions the Commissioner to exercise his supervisory authority and refund the three (3) month extension fee filed with Applicant's amendment filed concurrently herewith. The reasons for this petition are as follows:

(1) On July 6, 2001, the applicant filed an Amendment in the present Reissue case which added two new claims 16 and 17. The entire text of each claim to be added was presented in compliance under 37 C.F.R. 1.173, but the claims were not underlined.

(2) Another Official Action dated August 3, 2001 was issued which did not raise an issue as to underlining. Applicant timely responded.

(3) Another Official Action dated June 6, 2002 was issued which did not raise an issue as to underlining. Applicant timely responded.

(3) An Advisory Action dated September 9, 2002 was issued which did not raise an issue as to underlining. Applicant timely responded on October 9, 2002 complying exactly with the Examiner's instructions.

(4) An Advisory Action dated 13 December 2002 was issued which raised two new issues. One issue was an objection to amendments to claims 5 and 11 because those claims had been previously canceled. While Applicant has complied with the Examiner in his Response filed concurrently herewith, Applicant notes that the objected-to amendments were in direct response to the Examiner's specific (mistaken) instruction to amend claims 5 and 11 set forth in the Official Action dated September 9, 2002. The other issue was to resubmit the two claims 16 and 17 originally added back on July 6, 2001 in underlined format pursuant to MPEP 1453. This was a brand new issue, never yet raised, which dated back to a change made on July 6, 2001. Despite this being a new issue (apparently overlooked by the Examiner), the Examiner did not give Applicant any time to address the issue. Rather, the Examiner keyed the response window (to this 13 Dec. 2002 Advisory Action) back to the due date of October 9, 2002 (the due date for the prior Advisory Action dated September 9, 2002). This today forced applicant to submit a three (3) month extension fee under Section 1.17(a)(3) of \$465.00 in order to address an issue which had never been raised.

(5) Applicant has contacted the Examiner requesting a 30-day time period to respond to the Advisory Action dated 13 December 2002 in order to avoid the extension fee. While the Examiner was apologetic and confirmed that the Advisory was to correct one issue that was not the fault of the Applicant, and the brand new underlining issue, the Examiner nevertheless indicated that he tried to give applicant a 30-day response period until January 30, 2003, but that the PTO docketing system would not allow it.

(6) Whereas Applicant has effectively been charged with a late fee despite timely complying with all of the Examiner's documented requirements, Applicant herein requests a refund of the three (3) month extension fee submitted on this date under Section 1.17(a)(3) of \$465.00.


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It is understood that no fee is required for this petition. However, if a fee is required, it is requested that this be charged against our account no. 03-3565.

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In view of the above, it is believed that the requested Refund is in order, and if the Commissioners so agrees the refund may be credited to our account no. 03-3565.

Respectfully submitted,



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